03-0958 M.S.R. v. Salt Lake City Corp. Issued:8/31/05

Salt Lake City Corporation ("Salt Lake City" hereafter) asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to M. S. R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On September 25, 2003, Ms. R. filed an application with the Commission to compel Salt Lake City to pay workers' compensation benefits for injuries Ms. R. suffered in a traffic accident on February 24, 2000. Judge La Jeunesse held an evidentiary hearing on Ms. R.'s claim on August 5, 2004, and then on January 20, 2005, issued his decision awarding benefits to Ms. R..

In its request for Appeals Board review of Judge La Jeunesse's decision, Salt Lake City argues Ms. R. is not entitled to workers' compensation benefits because her injuries did not arise out of and in the course of her employment.

FINDINGS OF FACT

Salt Lake City has not challenged Judge La Jeunesse's findings of fact. The Appeals Board therefore adopts those findings which, as relevant to the issue presented by Salt Lake City's motion for review, may be summarized as follows.

Ms. R. worked for Salt Lake City as a police officer. Her duties included general law enforcement, responding to calls, traffic stops, and filing required reports. While off duty, Ms. R. was expected to respond to calls from dispatch, respond to felonies or other violations committed in her presence, render aid to accident victims, and respond to requests for assistance from other law enforcement agencies.

Beginning in 1991, Ms. R. participated in the Salt Lake City's "Take Home Car Program." Under this program, Salt Lake City allowed Ms. R. and other police officers to commute to work in their patrol cars. Salt Lake City implemented the "Take Home Car Program" in order to achieve several objectives. The program made more officers available for immediate response. City-owned patrol cars received better care. Furthermore, Salt Lake City's police presence was more visible as off-duty police officers drove their patrol cars within the jurisdiction.

Salt Lake City also imposed several restrictions and requirements on officers participating in the "Take Home Car Program." Officers were required to the keep their cars clean and well maintained. They were required to carry a service gun, police radio, identification, flashlight, ticket book, report forms and flares in the vehicle at all times. Even when off duty, they were required to monitor police radio and, if necessary, respond to emergency calls. While officers were permitted to have passengers with them under some circumstances, the officers were required to leave such passengers in a safe place before responding to emergencies or dangerous calls.

In addition to the foregoing requirements which were generally applicable to all officers participating in the "Take Home Car Program," additional requirements were imposed on Ms. R. because she lived outside Salt Lake County. Her off-duty use of her patrol car was limited to commuting between work and home and she was required to pay Salt Lake City $34.62 every two weeks. Thus, Ms. R. benefited by not having to provide her own transportation for commuting.

On February 24, 2000, the date of Ms. R.'s accident, Salt Lake City required that she attend a Field Training Officers meeting in Salt Lake City. She drove her patrol car from Tooele to Salt Lake City, attended the meeting, and then set out to return to her home. She also took her 14-month old son with her to and from the meeting. After the meeting, Ms. R. filled her patrol car with fuel at the Salt Lake City gas pump and proceeded toward home in Tooele. On Highway 36 in Tooele County, her car cR.ed the center line and hit several vehicles traveling in the opposite direction. Ms. R. injured her neck in the accident. She now seeks workers' compensation benefits for that injury.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-401(1) of the Utah Workers' Compensation Act provides medical and disability benefits to employees injured "by accident arising out of and in the course of employment." The question presented in this case is whether Ms. R.'s injury, which occurred as she drove her police car home from work, arose out of and in the course of her employment. Salt Lake City argues that under the "coming and going" rule, Ms. R.'s injuries did not arise out of and in the course of her work and consequently are not compensable under the workers' compensation system.

The Utah Supreme Court has already dealt with some of the repercussions of Ms. R.'s accident. In *Ahlstrom v. Salt Lake* City, 73 P.3d 315 (Utah 2003), the Ahlstroms sought compensation for injuries suffered when Ms. R.'s patrol car collided with the Ahlstrom vehicle. The Ahlstroms argued that, because Ms. R. was within the scope of her employment at the time of the accident, Salt Lake City was liable for the resulting damages. The Supreme Court rejected the Ahlstroms' argument and held that, for purposes of negligence actions, the coming and going rule prevented Ms. R. from being considered within the scope of her employment at the time of the accident. However, the Supreme Court made it abundantly clear that application of the coming and going rule in a **negligence** case was not determinative of the rule's application in a **workers' compensation** case. In an extensive footnote, the Supreme Court stated in *Ahlstrom*, 73 P.3d at 320:

> Scope of employment questions are inherently fact bound. The scope of employment questions arises in both worker's compensation and negligence cases but the method by which the question is answered is markedly different. We have said that the Worker's Compensation Act "should be liberally construed and applied to provide coverage. Any doubt respecting the right of compensation will be resolved in favor of the injured employee." *State Tax Comm'n*, 685 P.2d at 1053. Negligence cases require proof by the preponderance of the evidence that the employee was acting within the scope of employment. With very different presumptions governing worker's compensation and negligence cases, it would not be wise to hold that the rules governing scope of employment questions in one area

are wholly applicable to the other because the legal effect of identical facts may be different in a negligence case than in a worker's compensation case.

In light of the Supreme Court's comments in *Ahlstrom*, ibid, the Appeals Board concludes that it cannot simply adopt the Court's application of the coming and going rule in that negligence action. Instead, the Appeals Board must apply the coming and going rule to this workers' compensation claim according to standards and principles that have been established under the Workers' Compensation Act. And in doing so, the Appeals Board is mindful of the principles of liberal construction that apply to workers' compensation claims. *State Tax Comm'n v. Industrial Comm'n*, 685 P.2d 1051, 1053 (Utah 1984); *Drake v. Industrial Comm'n*, 939 P.2d 177, 182 (Utah 1997).

As already noted above, injuries are only compensable under the Workers' Compensation Act when they arise out of and in the course of employment. See §34A-2-401(1) of the Act. Whether an injury is work-related, and therefore compensable, depends on the specific facts of each case. As a general rule, injuries sustained while traveling to and from work are not considered to arise out of and in the course of employment and are not compensable. *VanLeeuwen v. Industrial Commission*, 901 P.2d 281, 284 (Utah App. 1995). However, the coming and going rule is not absolute. Among its exceptions are situations where the employer provides transportation primarily for the employer's own benefit and exercises control over the use of that transportation. *VanLeeuwen* at 285. It is therefore necessary for the Appeals Board to consider whether Ms. R.'s travel falls within this exception to the coming and going rule.

In evaluating the benefits Salt Lake City received from Ms. R.'s travel in her police car, the Appeals Board notes that Salt Lake City established the Take Home Car Program because the City believed the program served the City's interests. Notably, Salt Lake City benefited from more officers available for immediate response, from better care of patrol cars, and from increased police visibility. The Appeals Board also notes that under the Take Home Car Program, Salt Lake City exercised substantial control over the officers' use of their city-provided transportation. They were required to have a gun and other equipment in their cars at all times. They were required to monitor and respond to dispatch calls. They were required to engage in police action when feasible. All of these provisions applied to Ms. R. at the time of her accident.

In light of the conditions established by Salt Lake City in its Take Home Car Program, the Appeals Board concludes that Salt Lake City received substantial benefit and exercised substantial control over Ms. R.'s travel. While it is true that Ms. R. also received a personal benefit from lower transportation costs, even that benefit was reduced by the requirement that she make a bi-weekly cash payment to Salt Lake City.

On balance, the Appeals Board finds that, under the policy established by Salt Lake City itself, Salt Lake City received the predominant benefit from Ms. R.'s travel. Consequently, Ms. R.'s accident and injury on February 24, 2000, arose out of and in the course of her employment and is compensable under the Utah Workers' Compensation Act.

ORDER

The Appeals Board affirms Judge La Jeunesse's decision and denies Salt Lake City's motion

for review. It is so ordered.

Dated this 31st day of August, 2005.

Patricia S. Drawe
Joseph E. Hatch

DISSENT

I respectfully dissent from the Appeals Board's majority decision. In *VanLeeuwen v. Industrial Commission*, 901 P.2d 281, 284 (Utah App. 1995), the decision turned on which party, the employer or the employee, received the predominate benefit from the travel. In my view, the realities of Ms. R.'s use of her patrol car for commuting to and from work establish that Ms. R. received the primary benefit. That she was spared most of the expense of travel from Tooele to Salt Lake City was a major benefit to her. In contrast, it is difficult to discern any significant benefit that Salt Lake City was receiving from Ms. R.'s off-duty travel at the time of her accident, some 30 miles outside Salt Lake City. This is particularly true in light of the facts that 1) at that distance she had only spotty reception of radio calls and 2) she had her 14 month-old child with her in the car.

At the time of the accident on February 24, 2000, Ms. R. was performing no services for Salt Lake City, but was simply returning home after work. Ms. R.'s work neither caused nor contributed to the accident. I see no significant difference between Ms. R.'s circumstances and the circumstances of thousands of other Utah commuters who, under the coming and going rule, would be denied workers' compensation benefits if they were involved in such an accident.

Because Ms. R. received the predominate benefit from her off-duty use of her patrol car, I would hold that she is subject to the coming and going rule, and that her accident and injuries incurred while commuting home on February 24, 2000, are not compensable under the workers' compensation system.

Colleen S. Colton, Chair